

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

BENITO VALDEZ,

Defendant.

JOHN G. KOELTL, District Judge:

11 Cr. 938 (JGK)

MEMORANDUM OPINION AND
ORDER

The pro se defendant, Benito Valdez, has moved for a reduction in sentence in light of Amendment 782 to the United States Sentencing Guidelines, which generally reduced the offense levels for controlled substance offenses by two levels. See 18 U.S.C. § 3582(c)(2).

At a sentencing hearing on September 14, 2014, the defendant was sentenced as a Career Offender under § 4B1.1(b) of the U.S. Sentencing Guidelines. The defendant pleaded guilty to a conspiracy in violation of 21 U.S.C. § 846 to distribute heroin in violation of 21 U.S.C. § 841(b)(1)(B). Therefore, under § 4B1.1(b), the offense level was 34. After giving the defendant credit for acceptance of responsibility, the Court concluded that the total offense level was 31, and the Criminal History Category was VI, and the guideline range was 188 to 235 months. The Court, however, downwardly varied and sentenced the defendant to 128 months' imprisonment. See generally Sentencing Tr. at 16-17, 19.

The recent amendments to the Sentencing Guidelines do not change the Career Offender Guideline, and, therefore, the Guidelines that apply to the defendant are no different from those that applied at the time of sentencing. Accordingly, the defendant is not eligible for resentencing. See 18 U.S.C. § 3582(c)(2); U.S.S.G. § 1B1.10(a)(2)(B); see also United States v. Thomas, 775 F.3d 982, 983 (8th Cir. 2014) (per curiam); United States v. Martinez, 572 F.3d 82, 85 (2d Cir. 2009) (per curiam); United States v. Frederick, No. 11-cr-1058 (JGK), 2015 WL 3650077, at *1 (S.D.N.Y. June 9, 2015).

The defendant's application for resentencing is therefore denied.

SO ORDERED.

**Dated: New York, New York
October 26, 2015**

_____/s/_____
John G. Koeltl
United States District Judge